

HOW CAN LAWS PROVIDE SECURITY WITHOUT THREATENING TREASURED FREEDOMS?

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We are a government of laws, not of men. Our law is the product of moral principle, reason, and wisdom acting upon our experience for the benefit of our society.

Law and morality go hand in hand. To maintain good morals in our society, we need the law. And if the law is to be obeyed, we need people of good morals. Liberty and responsibility also go hand in hand. Liberty carries with it the responsibility to obey the law in order to preserve the liberty we enjoy. In other words, observance of the law is the safeguard of liberty; defiance of the law is a threat to our treasured freedoms. We cannot legislate the morality of the heart, but we can regulate behavior and legislate against specific acts of human evil.

The law must progress with society's development over time. It is the result of experience and custom, slowly evolving to remedy the wrongs that we have recognized. Therefore, the law will always be behind the times, since we cannot recognize in advance every possible misconduct, harm, or grievance, and because the law and the courts function as a debated and deliberative process.

Many are troubled by what legal action, if any, should be taken when immoral or evil persons, who despise our treasured freedoms, prey upon our society. When the urgency of terrorist attacks is upon us, the normal reaction is a willingness to sacrifice liberty for security. This is the tyranny of the urgency itself. It is a very dangerous time because the rule of law – and our treasured freedoms – can be dissolved in our lifetime by a well-meaning but injudicious overreaction. We must resist the temptation of making the end justify the use of any and all means.

As we all now recognize, even the most draconian security measures may not prevent a terrorist bent on suicidal destruction from achieving his goal. We can conduct full body cavity searches for weapons, but one's hands alone can be a deadly weapon sufficient to carry out a dastardly plan. Security can be nine parts illusion and one part reality. We should be careful not to go headlong into sacrificing the certainty of freedom for the illusion of security.

Laws are a necessary evil, because control and force are the basis of every law. Illegal practices used by the government to deal with those thought to be evil can be just as threatening to our treasured freedoms as the evil ones themselves. Admittedly, the constitution sometimes protects the guilt of a few so that all of us are protected from abuse of power. But that by-product was a well-considered and fundamental public policy decision balancing the interests of our community security and our individual liberty.

We have a constitution. It is more than 200 years old. It is the safeguard of our liberty. It is the sole political source and guaranty of our treasured freedoms. The moral principle, reason, and wisdom giving birth to the constitution was and is meant to last forever – regardless of the urgency of the current times.

For example, the constitution does not forbid all searches and seizures by the government – only unreasonable ones. What is unreasonable depends upon the experience of society. Certainly, human progress and experience may change our concept of what is reasonable, but it remains constant that unreasonable conduct by the government will not be tolerated.

Figuratively speaking, the constitution was written in stone – it is not a “living, breathing document” as some contend. Judges and legislators cannot simply change its words or meaning because of the urgency or crisis of the day.

So, how can laws provide security without threatening treasured freedoms? By scrupulous fidelity to the constitution; by responsibly exercising balance, common sense, and proportionality in the enactment and enforcement of laws conforming to that constitution; and by obeying those laws.